TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~866.~~ 136.

THE UNITED STATES, INTERVENORS, PLAINTIFFS IN ERROR,

vs.

JOHN P. TWEED AND BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE TREASURY DEPARTMENT OF THE UNITED STATES.

FILED OCTOBER 30, 1871.

No. ~~928.~~ 361

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE TREASURY DEPARTMENT OF THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

FILED MARCH 8, 1872.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

SUPREME COURT OF THE UNITED STATES.

No. 366.

THE UNITED STATES, INTERVENORS, PLAINTIFFS IN ERROR,

vs.

JOHN P. TWEED AND BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE TREASURY DEPARTMENT OF THE UNITED STATES.

No. 628.

BENJAMIN F. FLANDERS, DEPUTY GENERAL AGENT OF THE TREASURY DEPARTMENT OF THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN P. TWEED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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United States circuit court, fifth circuit and district of Louisiana.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUPERVISING SPECIAL AGENT of the U. S. Treasury Department. } No. 3857.

Petition for writ of sequestration, affidavit, and order.—Filed April 21st, 1866.

To the honorable the judges of the United States circuit court for the sixth judicial circuit and the eastern district of Louisiana:

The petition of John P. Tweed, who is a citizen of the State of Ohio, respectfully shows and states that he is the owner of, and entitled to the possession of, one hundred and twenty-three (123) bales of cotton, fifty bales of which are stored in the Shippers' press, being a part of two hundred bales of same mark now stored there, and seventy-three bales of which are stored in Szymanski's press, all in the city of New Orleans, the weights and marks of which are given in the statements marked A and B, hereto annexed, and made part of this petition; that
2 Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, who is a citizen of the State of Louisiana, unjustly retains possession of said cotton, and refuses to deliver the same to your petitioner; that no part of said cotton is captured or abandoned property, under any act of Congress, nor by virtue of any military seizure, nor has the Government of the United States any right, title, or interest in or to the same or any part thereof; that said cotton is of the value of seventeen thousand five hundred dollars, ($17,500;) that said cotton is the property of your petitioner, and is in the possession of said B. F. Flanders; and that he fears that said B. F. Flanders will, during the pendency of this suit, dispose of and remove said cotton out of the jurisdiction of this court.

Wherefore, your petitioner prays that the premises, the annexed bond and affidavit, being considered, without prejudice to his right of action to recover damages for the unlawful retention of said cotton, the said Benjamin F. Flanders may be cited to appear and answer this petition; that a writ of sequestration may issue from this honor-
3 able court, directing the U. S. marshal of this court to take said cotton into his possession, and hold the same until the further order of this court; and that, after due proceedings, your petitioner have judgment, decreeing that said one hundred and twenty-three (123) bales of cotton are his property, and that the same be delivered to him, or, in default thereof, that he have judgment against the said B. F. Flanders for the said sum of seventeen thousand five hundred dollars, with legal interest thereon, from judicial demand, with privilege upon the property sequestered, and for his costs, and for all general and special relief.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for Petitioner.

STATE OF LOUISIANA, *Parish of Orleans, ss:*

Personally appeared John P. Tweed, the petitioner named in the above petition, who, being duly sworn, says that all the facts and allegations set forth in his foregoing petition are true.

(Signed) J. P. TWEED.

Sworn to & subscribed before me this 21st day of April, 1866.
(Signed) F. B. VINOT, *D'y Clerk.*

4 *Order.*

Let a writ of sequestration issue in this case, as prayed for, and according to law, upon plaintiff giving bond, with good and solvent security, in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, April 21st, 1866.
(Signed) E. H. DURELL, *Judge.*

Statements A and B annexed to petition, and filed April 21st, 1866.

STATEMENT MARKED "A"—WEIGHTS.

50 bales of cotton, marked W. B. Aiken, stored in Shippers' press:

508	416	462	492	434
542	470	440	453	424
439	429	437	425	414
526	500	468	388	494
464	460	379	433	454
390	505	500	381	514
453	490	527	514	483
473	379	420	425	470
466	503	464	459	383
418	423	464	450	494
4,679	4,575	4,561	4,420	4,564

STATEMENT MARKED "B."

73 bales of cotton stored in Szymanski's press, (W. B. Aiken, 46 bales:)

510	520	465	512	482
476	506	466	454	475
5 492	398	464	508	550
452	465	460	450	520
530	456	458	460	505
568	428	520	515	478
393	506	528	498	
408	515	538	525	
445	521	495	466	
506	498	466	475	
4,780	4,813	4,860	4,863	3,010

(G.)	472	(B.)			
L. P.,	505		570	547	W. A. B. 415
2 bales.		14 bales.	460	377	4 bales. 590
(W. C.)	470		495	525	480
	470		513	445	463
3 bales.	505		512		
			493		
R. T.	440		512		
4 bales.	450		503		
	423		560		
	455		462		

United States circuit court.

Bond for sequestration.—Filed April 21st, '66.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUP. SPECIAL AG'T, &C. } No. 3857.

Know all men by these presents that we, John P. Tweed, as
6 principal, and Joseph H. Oglesby, as surety, are held and firmly bound, jointly and severally, unto Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said Benjamin F. Flanders, in his said capacity, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 21st day of April, in the year of our Lord eighteen hundred and sixty-six.

Whereas John P. Tweed has this day presented a petition to the honorable the circuit court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of sequestration against 123 bales of cotton, fully described in the petition of said plaintiff and obligor on file in the said court:

Now the condition of the above obligation is that we, the above-bounden John P. Tweed and Joseph H. Oglesby, will well and truly
7 pay to the said Benjamin F. Flanders, in his said capacity, the defendant in said suit and sequestration, all such damages as he may recover against us in case it should be decided that the said sequestration was wrongfully obtained.

[L. S.] (Signed) J. P. TWEED.
[L. S.] " JOS. H. OGLESBY.

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.

[25-c. int. rev. stamp, affixed and cancelled.]

United States circuit court.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUP. SPECIAL AG'T OF the U. S. Treasury Department. } No. 3857.

Writ of sequestration.—Issued April 21st, 1866.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

JOHN P. TWEED
vs.
B. F. FLANDERS, SUPERVISING SPECIAL AGENT of the U. S. Treasury Depart. } No. 3857.

United States circuit court, eastern district of Louisiana.

The President of the United States of America to the marshal of the United States for the eastern district of Louisiana, greeting:

You are hereby commanded to sequester and take into your
8 possession according to law 123 bales of cotton; 50 bales marked W. B. Aiken, stored in Shippers' press, being a part of 200 bales of cotton of same mark now stored there, and 73 bales of cotton stored in Szymanski's press, marked thus: 46 bales, W. B. Aiken; 2 bales ⟨G⟩ L. P.; 3 bales (W. C.;) 4 bales, R. T.; 14 ⟨B⟩; bales 4 bales, W. A. B.; which said 123 bales of cotton have been illegally taken possession of, and are now held by Benjamin F. Flanders, a citizen of the State of Louisiana; that said Flanders, under cover and claims as supervising special agent of the U. S. Treasury Department, as alleged in the said plaintiff's petition on file.

And of what you may do in the premises make due return to our said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 21st day of April, 1866.

(Signed) CHAS. CLAIBORN, *Clerk.*
[SEAL OF COURT.] By F. B. VINOT, *D'y Clerk.*

Marshal's return on foregoing writ.

Received April 21st, 1866, and in obedience to the within writ, seized and took into my possession 50 bales in Shippers' press, which had been repicked and repaired before seizure; served a notice of seizure
9 of the said 50 bales on P. I. McGrath, yard-clerk of Shippers' press, where said cotton was seized, and obtained from said clerk a receipt for said cotton in favor of the U. S. marshal; served also a notice of seizure on G. P. Ring, superintendent of Szymanski's press, where I seized and took into my possession 73 bales of cotton, and obtained from said superintendent a receipt for said 73 bales, in favor of the U. S. marshal.

This writ returned executed on the 21st April, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

United States circuit court, sixth circuit and eastern district of Louisiana. April term, 1866.

Motion of defendant to bond.—Extract from the minutes, April term, 1866.

NEW ORLEANS, *Saturday, May 5th*, 1866.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

On motion of Durant and Horner, attorneys for defendant, and
10 of John K. Goodloe, district attorney for the United States for the eastern district of Louisiana, it is now ordered by the court

that the defendant have leave to bond the 123 bales cotton sequestered in this suit, on giving security in the sum of dollars, conditioned as the law directs; the value of said cotton to be ascertained by H. G. Heartt and R. L. Robortson.

Rule taken by plaintiff to bond.—Extract from the minutes, April term, 1866.

NEW ORLEANS, *Saturday, May 5th*, 1866.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

On motion of Sullivan, Billings and Hughes, attorneys for plaintiff, it is ordered that the defendant show cause, on the 7th day of May, 1866, at 11 a. m., why the order herein granted, giving to the defendant leave to bond the property herein sequestered, should not be set aside, and the plaintiff herein have leave to bond the same, upon giving the requisite security, and that until the bonding under this rule, all
11 proceedings on the part of the defendant for bonding said cotton be stayed.

Rule taken by defendant to set aside writ of sequestration.—Extract from the minutes, April term, 1866.

NEW ORLEANS, *Saturday, May 5th*, 1866.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

On motion of Durant and Hornor, attorneys for the defendant, and of John K. Goodloe, district attorney of the United States for this district, it is ordered by the court that John P. Tweed, plaintiff, do show cause, on Saturday, the 12th day of May, 1866, at 11 o'clock a. m., why the writ of sequestration heretofore issued herein should not be set aside on the grounds now filed.

United States circuit court.

Grounds.—Filed May 5th, 1866.

JOHN P. TWEED *vs.* BENJ. F. FLANDERS. } No. 3857.

First. That on the face of the papers there is no legal ground for issuing the writ.
12 Second. That no statutes of the United States, and no rule of law, or of judicial proceeding established by their courts, warrants the issuing of a writ of sequestration against the defendant in posses-

sion of the property of the Government, as its officer properly appointed and qualified, and the legal custodian of the property.

Third. That defendant is in possession of the cotton involved in this suit by virtue of a contract with the Secretary of the Treasury and the said Tweed in relation to cotton formerly belonging to the so-called Confederate States; that the cotton in question is a portion of the same shipped to defendant, and that over this cotton so situated, and over the plaintiff's claim to it, if he really has any, this honorable court is entirely without jurisdiction. And even if all the allegations in plaintiff's petition be true, still this honorable court is without jurisdiction.

Fourth. Because the affidavit is illegal and defective, and the security on the bond not good and sufficient.

Marshal's return on the foregoing rule and grounds.

13 Received May 7th, and on the 8th day of same month and year served a copy of the within rule and grounds on B. F. Flanders, the defendant in the within suit, personally, at his office, corner of Crossman and Levee streets, in this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *May 9th*, 1866.

Order as to defendant's motion made on the 5th of May, 1866.—*Extract from the minutes, April term*, 1866.

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment—present, Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SP'L AG'T, &C. } No. 3857.

Ordered that the entry herein made on Saturday last, allowing the defendant to bond, be set aside and annulled, the same having been erroneously entered, and that the following entry be substituted in its place.

Durant and Hornors, esquires, attorneys for defendant, and John K. Goodloe, esq., district attorney of the United States for the eastern district of Louisiana, this day moved the court to allow the defendant to bond the 123 bales cotton sequestered in this case, upon his
14 giving bond and security according to law, which motion the court took under advisement, and ordered that in the meantime the cotton be appraised by H. G. Heartt and R. L. Robertson.

Order as to plaintiff's motion made on the 5th of May, 1866.—*Extract from the minutes, April term*, '66.

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment—present, Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. AG'T, &C. } No. 3857.

Ordered that so much of the motion made by plaintiff's attorneys, on

Saturday last, as prays to set aside the order allowing the defendant to bond the cotton sequestered herein be stricken from the minutes, leaving the plaintiff's application to bond undisturbed.

Motion to allow the United States to bond.—Extract from the minutes, April term, 1866.

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

JOHN P. TWEED *vs.* B. F. FLANDERS, SUP. SPEC. AG'T, &C. } No. 3857.

15 John K. Goodloe, esq., United States district attorney, this day moved the court to allow the United States to bond the 123 bales of cotton sequestered herein, upon the grounds set forth in his motion. Thereupon the court took time to consider.

Motion to bond on the part of the United States.—Filed May 7th, 1866.

J. P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

On motion of John K. Goodloe, United States district attorney for the eastern district of Louisiana, and on suggesting to the court that the 123 bales of cotton involved and sequestered in this suit *is* the property of the United States, and *was* only held by defendant Flanders as a special agent of the Treasury of the United States, it is ordered that the United States be permitted to bond the same without security.

United States circuit court.

Affidavit and order.—Filed May 7th, 1866.

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857 & No. 3872.

16 U. S. circuit court.

CITY OF NEW ORLEANS, *State of Louisiana:*

John P. Tweed, being duly sworn, says he is the *the* plaintiff in the suit now pending in the U. S. circuit court for the sixth judicial circuit and eastern district of Louisiana, entitled John P. Tweed against B. F. Flanders, and numbered 3857 and 3872 on the docket of said court; that said Flanders has in his possession certain papers and documents, to wit, affiant's bills of sales for four hundred and ninety-five bales of cotton now under seizure in said suits by the marshal of said court, which papers are important evidence for affiant in the prosecution of said suits; that affiant fears that said B. F. Flanders will cause said papers to be removed, and sent from this State and the jurisdiction of said court before the trial of said causes, or either of them; and that

thereby affiant fears he may be deprived of the advantage he expects to derive from the use of said papers and documents in evidence.

(Signed) J. P. TWEED.

Sworn to and subscribed before me this 7th May, 1866.

(Signed) F. B. VINOT,
Dep'ty Clerk.

[5-cents int. rev. stamp affixed & cancelled.]

17 U. S. circuit court.

Exceptions.—Filed May 7th, 1866.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

Now into court, by his undersigned counsel, comes the defendant, deputy general agent of the United States Treasury Department, and to the petition served upon him in this case excepts and says:

First. That the property in dispute herein comes under the head of captured property, and, as such, at the time of sequestration, was in the possession and custody of the defendant, as the legal keeper thereof, for the use and benefit of the United States, the cotton in question having been turned over to the agents of the Treasury Department by the officers of the United States Army, all with the knowledge of the plaintiff herein, who was a contractor with and a quasi officer of the Government, and with whose knowledge and assent the property in question was regularly shipped to and received by defendant. Hence the proper cognizance of this suit belongs not to this tribunal, which is without jurisdiction.

Second. That the property herein sequestered is de facto and
18 de jure "captured property," under the statutes of the United States, and should be dealt with as the law provides; it must be sold and its proceeds paid into the Treasury, there to await the action of the Court of Claims, when duly invoked; and all the courts of the Government are prohibited from taking original cognizance of such a case as the one before the court.

Third. That this court is without any jurisdiction to enquire into the mode of capture, the question of capture or no capture, or the time, manner, and circumstances of capture, because the question is not of a judicial nature.

Fourth. That this property, being the property of the Government of the United States, and in the hands of the proper officer of the Treasury Department, is irrepleviable, and no order of sequestration at the suit of the plaintiff could lawfully issue herein and take the property from the possession of the defendant.

Wherefore respondent prays that this exception be sustained, and this suit dismissed at plaintiff's costs and general relief.

(Signed) DURANT & HORNOR,
Of Counsel.

19 United States circuit court.

Answer.—Filed May 7th, 1866.

JOHN P. TWEED
vs.
B. F. FLANDERS, SP'L AG'T U. S. T. DEP'T. } No. 3857.

Now into court, by his attorneys, comes Benjamin F. Flanders, deputy general agent of the Treasury Department, U. S., and, reserving the benefit of his exceptions hereinbefore pleaded, now answers to the petition of the plaintiff as follows:

First. He denies the ownership of the 123 bales cotton, as alleged; he avers the said cotton is not the property of the plaintiff herein, but the property of the United States.

Second. He admits that, as an officer of the U. S. Government, he held possession of said cotton at the time and before the writ of sequestration issued *in* herein, the said cotton, with other lots, having been regularly shipped to him, and received by him, in his official capacity, by and from the Treasury agent at Shreveport, under a contract made with plaintiff and the U. S. Treasury Department, in relation to cotton, known as Confederate States cotton, captured in war and turned over to the Treasury Department by the officers of the U. S.
20 army; that, by virtue of said contract and certain services rendered by plaintiff, three-fourths of the number of bales received by defendant were turned over to plaintiff, and one-fourth was reserved by the United States under the adjudication provided for in the contract; that the said 123 bales form the one-fourth which is the property of the United States; and that the 372 bales claimed by plaintiff in his suit, No. 3872 of the docket of this hon. court, are the other three-fourths coming to the plaintiff under the said contract, which is made part hereof; and respondent denies that the said 123 bales is in any manner the property of the plaintiff, and he avers that it is de facto and de jure captured or abandoned property.

Third. Respondent is ignorant of the value of the cotton, and his means of knowledge are not very large.

Fourth. Respondent admits that his orders from the Treasury Department are to ship this cotton to New York.

Wherefore respondent prays for judgment in his favor, decreeing the property sequestered to belong to the United States, and its immediate restoration to him as its legal and proper custodian, with all
21 costs of court, and all further general and equitable relief.

(Signed) DURANT & HORNOR,
For Def't.

" JOHN K. GOODLOE,
U. S. Att'y, for Def't.

Rule to bond.—Taken by plaintiff on 5th May, 1866.—April term, 1866.—Extract from the minutes.

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment—present, Hon. E. H. Durell, dist. judge.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. AG'T, &C. } No. 3857.

The rule to bond, taken by plaintiff on the 5th instant, came up—Sul-

livan, Billings & Hughes for plaintiff in rule; Durant and Horner for defendant in rule—when, after hearing the pleadings evidence, the court took time to advise.

Circuit court of the Uuited States for the 6th circuit and eastern district of Louisiana.

Claim of the United States.—Filed May 8th, 1866.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } Claim of United States.

22 And now comes the United States, by John K. Goodloe, their district attorney for the eastern district of Louisiana, and file their claim to the 123 bales of cotton sequestered by plaintiff in this suit. And said United States, by their said attorney, say that they are the sole, true, and bona-fide owners of said cotton, and that no other person has any claim or right to or interest therein, all of which they will show to the court by due proof. They further state that said cotton was in possession of, and held by, Benj. F. Flanders, the defendant therein, at the time it was sequestered for the United States, and as a special agent of the Treasury Department of the said United States; and that, in holding the same as aforesaid, he was only acting as agent of, and for the benefit of, said United States; wherefore the said United States prays that their claim to said cotton, be allowed and adjudged good, and that the proceedings instituted by plaintiff against the same may be disallowed and dismissed with costs and damages.

(Signed) JOHN K. GOODLOE,
U. S. Att'y.

Order.—Extract from the minutes of May 12th, 1866.—Rule taken by plaintiff on 5th May, 1866, made absolute.

23 J. P. TWEED
vs.
B. F. FLANDERS, SUP. SPEC. AG'T, &C. } No. 3857.

For reasons orally assigned by the court, it is ordered that the rule, taken by the plaintiff on 5th instant, be made absolute, and that John P. Tweed be permitted to bond the 123 bales cotton sequestered in this case, and that the defendant's application of 5th instant, and that of the United States attorney of the 7th instant to bond said cotton, be refused.

Order.—Extract from the minutes of May 12th, 1866.—Continuance of defendant's rule.

JOHN P. TWEED
vs.
B. F. FLANDERS, SUP. SP'L AG'T, &C. } No. 3857.

The rule taken by defendant and the United States attorney, on 5th instant to set aside the writ of sequestration, was called up—

Durant and Hornor, and John K. Goodloe, United States attorney, for plaintiff in rule; Sullivan, Billings and Hughes for defendant in rule—

When, after hearing counsel, it is ordered that the same be continued till the 2nd day of June next, at 11 a. m.

24 *Appraiser's report.—Filed May 15th, 1866.—Appraiser's report of cargo.*

JOHN P. TWEED *vs.* B. F. FLANDERS. } No. 3857.

OFFICE OF THE UNITED STATES APPRAISERS,
New Orleans, May 14th, 1866.

We, the undersigned, appraisers of this honorable court, duly appointed and sworn, have the honor to report that we have this day carefully examined the cargo of cotton, and are of opinion that the actual market value of wholesale prices of the said merchandise are this day, and we do therefore appraise the same, as follows:

Marks. Shippers & planters' mark.	No.	Description of merchandise or vessels.	Value.
(F) Aikin		In Szymanski's press, in name of Scott, Cage, & Co.:	
(G) (W. G) 3	46	Bales, ordinary, 21,666 lbs., 28c	$5,466 48
R. T. 4. L. P. 2	9	" good ordinary, 4,239 lbs., 30c	1,271 70
(B)	18	" low, " repacked, & damaged, part heated, 8,478 lbs., 25 cents. Average, 471 lbs. each.	2,119 50
W. B. Aikin	50	In Shippers' press, in name of C. A. Weed & Co.: Bales, ordinary, 23,800 lbs. @ 25c	5,950 00
	123	Average weight, 476 lbs.	$14,807 68

25 These bales have been reboxed from the yard and repacked; make a good outside appearance, &c., &c., &c. Average weights 476 lbs., with the exception of the reboxed, (50 bales cotton.) All the other cotton is ragged, in bagging, and in bad order.

(Signed) H. G. HEARTT,
(") RICH'D L. ROBERTSON,
U. S. Appraisers, New Orleans.

To the Hon. E. H. DURELL,
Judge U. S. District Court for the Eastern District of Louisiana, New Orleans.

Certificate attached to appraisers' report.

Weight 10 bales cotton "marked" W. B. Aikin, weighed by order of the U. S. appraisers.

(Duplicate.)
518, 460, 410, 500, 465, 433, 503, 378, 430, 463 = 4,760.
"Average," 476 lbs.
New Orleans, May 13th, 1866.
(Signed) L. F. DEGRUY,
Weigher of the 50 bales reboxed, W. B. Aiken.

26 *Order to release cotton.—Extract from the minutes of May 15th, 1866.*

JOHN P. TWEED
vs.
BENJ. F. FLANDERS, SUP. SPEC. AG'T U. S. Treas'y Dep't. } No. 3857.

The appraisers having filed their report showing the value of the 123 bales cotton sequestered herein to be $14,807 68c., the plaintiff and his sureties Sam. Smith, Jos. H. Oglesby, and A. D. Grieff, appeared in court and executed a bond in that amount. And the said sureties having satisfactorily proven their solvency, and the bond being acknowledged in open court, it was ordered that the cotton be released and delivered to the plaintiff.

Release bond.—Filed May 15th, 1866.

Know all men by these presents that we, John P. Tweed, as principal, and J. H. Oglesby, for the sum of $5,000, A. D. Grieff, $5,000, and Sam'l Smith, $5,000, as sureties, are held unto Cuthbert Bullitt, United States marshal for the eastern district of Louisiana, in the sum of fourteen thousand eight hundred and seven $\frac{68}{100}$ dollars, for the payment whereof to the said Cuthbert Bullitt, U. S. marshal, his heirs, executors, administrators, or assigns, we jointly and severally bind
27 ourselves, our heirs, executors, and administrators, respectively by these presents, as witness our respective names hereunto affixed, at New Orleans, this 15th day of May, A. D. 1866.

Whereas in and by virtue of a writ of sequestration issued out of the honorable the United States circuit court for the sixth circuit and eastern district of Louisiana, holding sessions in the city of New Orleans, at the suit of John P. Tweed vs. B. F. Flanders, supervising special agent of the U. S. Treasury Department, and numbered 3857 on the docket of the said court, and which suit is now pending therein, the following-described property, to wit, one hundred and twenty-three bales of cotton, have been seized, taken into custody of the said United States marshal, and detained according to law; but the same has been released and delivered to the said John P. Tweed upon the appearance of the said Tweed in the said suit, and delivering to the said Cuthbert Bullitt, United States marshal, the present obligation, which has been executed in pursuance of an order of said court, issued on the twelfth day of May, 1866.

The condition of which is such, that if the said plaintiff, John P. Tweed, shall not send the above-described property out of the
28 jurisdiction of the court; that he will not make an improper use of it, and that he will faithfully present the same in case he should be decreed to restore the same to the said U. S. marshal, or shall satisfy such judgment as may be rendered in the suit pending as above mentioned, then this obligation to be void; or else to remain in full force.

(Signed) J. P. TWEED.
" JOS. H. OGLESBY.
" SAM. SMITH.
" A. D. GRIEFF.

Signed and delivered in open court.

[25-c. int. rev. stamp affixed & cancelled.]

United States circuit court.

Writ of release.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

EASTERN DISTRICT OF LOUISIANA, *ss:*

NEW ORLEANS, *Clerk's Office.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas John P. Tweed, claimant of 123 bales cotton sequestered herein, hath obtained leave of court to bond the same, and which said order is now of record in this office, you are hereby authorized
29 to release the said 123 bales cotton from seizure, and them to restore to the possession and custody of said claimant, he having given bond conditioned as required by law, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 15th day of May, A. D. 1866, and the 9th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received, May 16th, 1866, and same day, month, and year, delivered to the plaintiff, John P. Tweed. (123) one hundred and twenty-three bales of cotton, by going to the Shippers' press in this city and giving written orders to the yard-clerk of said press to turn over said cotton unto said Tweed, which was done in obedience to this writ.

New Orleans, May 16th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

U. S. circuit court.

Peremptory exception.—Filed January 29th, 1868.

30 JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

And now comes defendants in above-entitled suit, and peremptorily except to the right of plaintiff to stand in judgment in above-entitled suit, because they say that the said plaintiff is not and never was the owner of the claim sued on, but that he owns therein but a $\frac{2}{3}$ interest, and that the other $\frac{1}{3}$ interest in the 123 bales sequestered in this suit and sued for by said plaintiff, is and has at all times been in one E. L. Scott.

They therefore except to said suit, and ask that the same be dismissed, the said plaintiff being absolutely without right to stand in judgment in above-entitled suit.

(Signed) STUART & WHITAKER,
Of Counsel.

Final judgment.—From judgment docket.

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, 1867.

NEW ORLEANS, *Wednesday, Jan'ry 29th*, 1868.

Court met pursuant to adjournment—present, Hon. E. H. Durell, dis't judge.

31 JOHN P. TWEED *vs.* B. FLANDERS. } No. 3857.

This cause came up for trial—Sullivan, Billings and Hughes, for plaintiff; J. S. Whitaker and D. Stuart, for defendant—and, the court having overruled the peremptory exception now filed by the defendant, the trial proceeded; and, after hearing the pleadings, evidence, and counsel, it is ordered, adjudged, and decreed that the plaintiff, John P. Tweed, be recognized as the lawful owner of the property sequestered in this case, and that the bond by him furnished for the release of the same be cancelled and annulled. It is further ordered that defendant pay costs of suit.

Judgment rendered January 29th, 1868.
Judgment signed February 13th, 1868.

(Signed) E. H. DURELL, *Judge.*

In the circuit court of the United States for the fifth judicial circuit and district of Louisiana.

Petition for writ of error.—Filed February 21st, 1868.

JOHN P. TWEED *vs.* BENJAMIN F. FLANDERS, DEPUTY GENERAL agent of the U. S. Treasury Department. } No. 3857.

32 To the Honorable E. H. Durell, judge of said court:

The petition of said defendant respectfully shows that he is aggrieved by a final judgment rendered against him in this cause, and is informed that there is error to his prejudice in said judgment; that he is ordered by the Secretary of the Treasury of the United States, on behalf of the Government thereof, to prosecute a writ of error in this case, with the object of having the decision of this court reviewed in the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him, returnable to the first day of the next term of the Supreme Court, and that the same may operate as a supersedeas herein, without demanding the usual bond.

(Signed) SAM. H. TORREY,
U. S. Att'y.
" J. S. WHITAKER,
" D. STUART,
Special Counsel

Judge's certificate.—Filed May 13th, 1868.

TWEED *vs.* FLANDERS. } No. 3857.

33 In pursuance of the 8th section of the act of Congress, approved July 28th, 1866, extending the provisions of the 2nd, 3d, and 4th sections of the act of March 2nd, 1833, and of the 12th section of the act of March 3d, 1863, to cases arising against any officer of the United States by reason of any act done under authority or color of the act of March 12th, 1863, or the act of July 2nd, 1864, provided that such acts done, or proceedings had, under the two last acts aforesaid, or under colour thereof, shall have been done and had under the authority or by the direction of the Executive Government of the United States, the undersigned certifies in this suit, wherein on the 29th day of January, 1868, the plaintiff, by the final judgment of this court, recovered the possession of 123 bales of cotton, with his costs of suit, which are taxed at the sum of four hundred and seventy-three $\frac{66}{100}$ dollars; that defendant acted under the directions of the Secretary of the Treasury.

(Signed) E. H. DURELL, *Judge.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges
34 of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or one of you, between John P. Tweed, as plaintiff, and Benjamin F. Flanders, deputy general agent of the U. S. Treasury Department, as defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs
35 of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 21st of February, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) D. URBAN,
Clerk of United States Circuit Court for District of Louisiana.

Mandate of the United States Supreme Court.—Filed May 31st, 1870.

NOTA.—See motion and order transcribed at page 41.

Recording of mandate.—From minutes, April term, 1870.

NEW ORLEANS, *Tuesday, May 31st*, 1870.

Court met pursuant to adjournment—present, His Honor J. P. Bradley, associate justice of the Supreme Court, presiding; W. B. Woods, judge of the circuit court.

JOHN P. TWEED
vs.
B. F. FLANDERS, D'Y GEN. AGENT U. S. Treasury. } No. 3857.

A writ of error having been taken in this case to the Supreme
36 Court of the U. S. from the decree rendered by this court on the 29th January, 1868, the mandate of said court was this day filed, and, on motion of A. B. Long, esq., ordered to be recorded, and it is as follows, viz:

"And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-nine, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel.

"On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said defendant recover against the said plaintiff, John P. Tweed, twenty dollars for his costs herein expended, and have execution therefor.

"And it is further ordered, that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award a new trial in conformity with the opinion of this court.

"21st March, 1870."

Amended and supplemental answer.—Filed February 14th, 1871.

Circuit court of the United States for the district of Louisiana.

37 JOHN P. TWEED
vs.
B. F. FLANDERS, DEPUTY GENERAL AGENT of the United States Treasury Department. } No. 3857. Amended and supplemental answer.

And now comes B. F. Flanders, deputy general agent of the United States Treasury Department, defendant herein, by J. R. Beckwith, United States attorney for the district of Louisiana, appearing herein for said defendant by lawful directions and authority, and, by leave of this court for that purpose first had and obtained, for amended, supplemental, and further answer and plea to said plaintiff's petition herein, saith that said plaintiff ought not to further have and maintain his said action against this defendant, for he saith that, at and during all the time and times in said petition mentioned and refer'ed to, said defendant was an officer and agent of the United States of America, to wit, a deputy general agent of the Treasury Department, thereof duly authorized, and that all and singular the goods, chattles, cotton, and property in said petition mentioned and refer'ed to were then and there, to wit, before and at the time and place in said peti-
38 tion mentioned, and before and at the time of the issuance and execution of the writ of sequestration issued from this court, by vir-

tue of which writ said property and cotton was wrongfully taken from the possession of the United States and of this defendant, was so in the possession, custody, and control of this defendant, and so held in his custody and control by the official act and authority of this defendant, done and performed as such officer and agent as aforesaid, in the administration of acts of Congress relating to States of the United States in insurrection and rebellion against the lawful Government of the said United States, or to persons and property in said insurrectionary States, to wit, an act of Congress, approved March 12th, 1868, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States;" and an act approved July 2, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection;" and of other acts of Congress relative
39 to said insurrectionary States, or persons or property therein, and in virtue of and under color of said acts of Congress, and in the exercise of his said office and agency as aforesaid. And he saith that all and singular all of the property and cotton in said petition mentioned and referred to, at the time when said plaintiff caused the same to be unlawfully seized, sequestered, and taken into the custody of the officer of this cour', by virtue of the said writ of sequestration, was, by virtue of possession, then by this defendant, as such officer and agent as aforesaid, by the authority and under the color of the acts of Congress aforesaid, in the due and actual custody, control, absolute possession of the Government of the United States of America, by reason whereof, and by the law, said property and all and every part, parcel, and portion thereof, then and there was beyond the lawful reach and effect of said alleged writ of sequestration, or any other like writ issued from this court, and that the issuance and execution of said writ of sequestration and the taking of said property into the possession of the officer of this court under the pretended authority of said alleged
40 writ of sequestration was in all things and respects an act of lawless and unjustifiable tre'pass and violence.

And said defendant further saith that all and singular the matters, acts, and omissions to act, whereof this defendant is in said plaintiff's petition charged, as therein complained of, the alleged holding said property and cotton therein described in the possession of this defendant, and his refusal and omission to yield up and deliver the same to said plaintiff as in said petition charged and complained of, were then and there in all respects acts done and acts omitted to be done by said defendant, not in his private character and capacity, but in the exercise of his said office and agency, and in the official character and capacity of agent and officer as aforesaid, done and performed by virtue and under color of, and in the administration of, the acts of Congress aforesaid; all of which said defendant is ready to verify.

Wherefore, and by reason of the premises and by reason of the statutes of the United States of America in such case made and provided, said defendant saith that this court is now and in all things and
41 at all times has been, without jurisdiction of or about or concerning the matters complained of and set forth in said plaintiff's petition, but the sole and exclusive jurisdiction thereof is now, and at all times has been, in the Court of Claims.

Wherefore said defendant prays judgment against said plaintiff, that said action be dismissed with costs and general relief; and that said

property and cotton described in said plaintiff's petition and seized in this suit, be restored to the said United States.

(Signed) J. R. BECKWITH,
U. S. Dist. Att'y for Defendant.

Order.

Let this supplemental and amended answer be filed.
February 14th, 1871.
(Signed) W. B. WOODS, *Judge.*

Motion and order annulling entry of May 31st, 1870.—Extract from minutes, November term, 1870.

NEW ORLEANS, *Wednesday, March 15th*, 1871.

Court met pursuant to adjournment—present, Hon. W. B. Woods, presiding judge; E. H. Durell, district judge.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

42 On motion of J. R. Beckwith, esqr., U. S. attorney, and on showing to the court that a mandate of the Supreme Court of the United States was erroneously and inadvertently filed herein, and entered of record on the 31st May, 1870, it is ordered that he be allowed to withdraw the same for the purpose of returning it to the clerk of the Supreme Court, and that the said entry thereof be annulled.

Hearing and continuance—Extract from minutes of Thursday, Ap'l 27th, 1871.—April term, 1871.

JOHN P. TWEED
vs.
BENJ. F. FLANDERS. } No. 3857.

This cause was resumed before the court and jury, and, after hearing the pleadings and evidence in part, owing to the indisposition of the defendant's attorney, the cause is continued till the 29th ins't at 11 a. m.

Hearing and continuance.—Extract from minutes of Monday, May 1st, 1871—April term, 1871.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

43 This cause was resumed, and, after hearing further evidence, ordered that the same be continued till to-morrow at 11 a. m.

Verdict.—Extract from minutes of Tuesday, 2nd May, '71.—April term, 1871.

J. P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

This cause was resumed, and, after hearing argument and receiving a

charge from the court, H. W. Farley was appointed foreman of the jury, and they retired to consider on their verdict. After due deliberation they returned into court and delivered the following verdict, to wit: "We, the jury, find for the plaintiff. May 2nd, 1871.

(Signed) "H. W. FARLEY,
"*Foreman.*"

Whereupon it was ordered that the verdict be as it is recorded.

44 *Bill of exceptions.—Filed May 2nd*, 1871.

Circuit court of the United States in and for the district of Louisiana, of the April term thereof, 1871.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS. } No. 3857. Bill of exceptions.

Be it remembered that, upon the trial of the cause of John P. Tweed vs. Benjamin F. Flanders, styled in the petition herein deputy general agent of the Treasury Department of the United States, numbered 3857 of the docket of the said circuit court of the United States in and for the district of Louisiana, before the Hon. E. H. Durell, district judge, holding said court, the said plaintiff, to maintain his petition, produced testimony to the jury that tended to prove to the effect that, by himself or his agents, he purchased and paid for the cotton described in the petition, being a part of a parcel of four hundred and ninety-five bales, purchased from different owners, and paid for the same at a fair market price, in and about Shreveport, in the State of Louisiana, according to the bills of sale hereto attached; that the same was shipped for
45 his account to agents of his own in New Orleans, and that he paid the freight, expenses, and insurance. The mode of the shipment will appear from one of the bills of lading attached to this bill of exceptions, and the fact appeared that the insurance was affected under an open policy of O. H. Burbridge, d'y supervising agent of the Treasury Department of the United States at New Orleans, and that it came to New Orleans to be subject to adjudication by O. H. Burbridge, agent as aforesaid.

The testimony further conduced to show that this property was raised in the northern part of Texas by planters, and was possessed by them until the winter of 1865 & '6, and was sent to market, or to Jefferson, Texas, as private property, and that it had never been captured by or surrendered to the Army or any military authority of the United States, nor included in any surrender; that none of it was the property of the Confederate States, or had been destined for their use, but was private property; and the defendant testified that he had no evidence at all to affect it as captured or abandoned property at the time this suit
46 was instituted; that, during the winter of 1865, '6, while the cotton was deposited in the warehouse at Jefferson, Texas, one Turnbull published a notice for claimants of cotton to make oath of their ownership, and, failing to do this, that he would seize it as captured property. He was then an agent of the Treasury to collect captured & abandoned property. One of the parties whose property was seized had no notice of this order, and his property was taken and held by Turnbull, and other cotton was seized by the said Turnbull upon protest of the same kind, and the testimony generally conduced to prove

that; that, in the opinion of the witness, his seizures were oppressive, causeless, and for the purpose of extortion.

In March, 1866, the plaintiff went to the city of Shreveport under a contract hereunto attached, marked "A." He discovered there, that there was no property of the kind upon which his contract operated. He was also informed that the contract had been revoked by the Treasury Department. The supervising agent at Shreveport first gave to him information to this effect. Thereupon he determined not to
47 take any proceeding under it, and so notified the agent at Shreveport.

During the months of February & March, he made purchases of cotton from the owners of the cotton that had been seized and held by Turnbull in the manner aforesaid, and which was then in the custody of the agents aforesaid, by reason of the seizures. He was informed that no evidence had been produced to affect the claims of the owners, and that the purchases were safe. The supervising Treasury agent at Shreveport who held the cotton so advised. Neither Turnbull nor Burbridge released the cotton from the seizure while they possessed it. The cotton was shipped to New Orleans in the manner before stated. During the term when these purchases were made, O. H. Burbridge was supervising agent at New Orleans for the district west of the Mississippi, but, on the 10th March, the defendant succeeded to the charge of that business, under instructions from the Treasury Department. On the 23rd day of March, 1866, the cotton arrived at New Orleans, and the defendant claimed that the contract aforesaid between the
48 plaintiff & Burbridge was applicable to the same, and that he was entitled, under that contract, to hold a portion of the purchase for the United States, because the plaintiff, having that contract, could make no purchase of cotton in which the Government did not take one-fourth part, although the purchase was not of cotton of the character referred to therein. The plaintiff resisted this claim, and insisted upon his title to the whole of the property. The defendant applied to the Treasury Department for instructions, and the instructions and correspondence hereunto annexed were given and had in consequence of the difference aforesaid. The defendant made a division under the contract, and delivered to the plaintiff's agents three-fourths of the cotton, and claimed to retain the other fourth, the cotton named in the petition herein, and did retain it. The plaintiff made a written protest against the partition, and claimed the entire property, and sued out the writ of sequestration, and filed the petition in this cause after the protest. The papers hereto attached, marked from 1 to 14, inclusive, on file as part of this bill of exceptions.

49 The plaintiff read to the jury the proclimations of the President relative to the release of restraints upon internal intercourse in the year 1865; also, the orders of the Secretary of War relieving trade and intercourse from military restraints, and the orders of the commanding general of the Department of Louisiana and Texas promising protection to private property upon the surrender of the confederate armies in May, 1865; that the evidence was concluded on the said 1st of May; the cause was regularly continued unto the next day, May 2d, 1871, when also came the said jurors and the said parties by their respective counsel, and the said judge, and the cause was in due form argued; that, after the said argument was completed and the cause was with the jury for its verdict, and before the said jurors retired to deliberate on their verdict, the plaintiff, by his said counsel, then and there asked of the said judge that he deliver his opinion and charge to

the jury as follows: the said charge so asked being in writing
50 and in the words following:

Circuit court of the U. S.

J. P. TWEED. vs. B. F. FLANDERS. } No.

If the jury believe that the cotton described by the petition was not captured by the Army of the United States nor surrendered to them; was not abandoned property, nor was ever property of the Confederate States, but was produced on the plantations of private individuals, and was held and possessed as private property by them until the purchase of the same by the plaintiff; and that he purchased the same on his own account from such private owner. and the same was delivered to him, and that the same was so held until the detention of the same by the defendant, who did not take hold or possess it under colour of any law or statute of the United States, or any authority of his office or colour of the same, but of his own will, the plaintiff is entitled to recover.

And being so requested, the said judge did so give and deliver the said written charge in the form above, as requested as aforesaid.

51 To which said last-mentioned charge and opinion of the said judge, the said counsel for the defendant did then and there except in behalf of said defendant.

That, after the said judge had so delivered the last-mentioned opinion, as aforesaid, the said defendant, by his counsel, did then and there pray the said judge to instruct and deliver to the said jury as his opinion the following:

1. If the jury believe, from the evidence, that the defendant, at the time of the institution of this suit, held the cotton described in the plaintiff's petition, in his custody, in the official character and capacity by which he is described in plaintiff's petition, to wit, as deputy general agent of the Treasury Department of the United States, as captured or abandoned property, or in the administration of or under color of either the act of Congress, approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in the insurrectionary district within the
52 United States," or the act of Congress, approved July 2nd, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured property and the prevention of frauds in the States declared in insurrection," then and in that case the custody of said cotton by the said defendant was custody and possession thereof for the United States, [* and said cotton could not lawfully be taken from him by virtue of the writ of sequestration issued in this case, and the jury must find a verdict for the defendant.]

Which said instructions and charge the said judge refused to give as written, but struck out all of the concluding sentences thereof, after the words "The United States," that is to say, struck out of said concluding sentence the following last clause: "And said cotton could not lawfully be taken from him by virtue of the writ of sequestration issued in this cause, and the jury must find a verdict for the defendant," and gave the said instruction to the jury so changed, and with said clauses

* Erased.

53 stricken out. And the court, in lieu of the said portion stricken out, as aforesaid, charged the jury, "that the title to the cotton was still a question which might be examined in the courts of justice; and if the plaintiff had established such a title, he could recover under the charge as first above given." To which said refusal of the said judge to charge the jury, as requested by said defendant, and to said modification thereof by striking out such words, and to the charge given to the jury in lieu thereof, *or* above set forth, the said defendant, by his counsel, did then and there except.

And the said defendant further then and there prayed the said judge to instruct and give the jury the following charge:

2nd. If the jury believe, from the evidence, that the defendant, at the time the cotton described in the plaintiff's petition, was taken from his possession, was in possession thereof, or was holding the same as an officer or agent of the United States administering an act of Congress relating to and providing for the collection of property captured or abandoned during the late insurrection and re-
54 bellion, or acting in virtue or under colour of such law, then custody of said cotton by the defendant was in law custody thereof by the Government of the United States, and this court was and is without jurisdiction or authority to sequester or take the same from such custody, and the execution of the writ of sequestration, issued and executed in this cause, was unlawful and without warrant in law, and the plaintiff is not entitled to recover the same in this cause or in this court.

Refused.

Refused.

Which said last-mentioned instructions and charge the said judge did then and there refuse to give to the said jury, writing across the same the word "Refused;" and the same was not given to the jury. To which said last-mentioned opinion of the said judge, and to his refusal to give the said charge and opinion to the jury, the said defendant, by his counsel, did then and there except.

That the said defendant did also, then and there, pray and request the said judge to deliver and give to the jury as his opinion and instruction, the following other instructions, which was also presented
55 to the said judge in writing, and was in the words following:

3rd. If the jury believe, from the evidence, that, at the time this suit was instituted and the writ of sequestration was issued and executed in this cause, the defendant held possession of the cotton described in plaintiff's petition and seized under the said writ of sequestration, as an agent or officer of the Treasury Department of the United States for the collection of abandoned and captured property, under the provisions of acts of Congress relating to property abandoned or captured during the late rebellion, then, and in that case, he had full right and authority to hold the same in his possession as such officer or agent, until he was satisfied that the said cotton was not captured or abandoned property, and that the United States had no claim thereto; and, until he voluntarily, or by the direction of the Secretary of the Treasury of the United States, or by the direction of some officer of the Treasury having authority over him, delivered the cotton to
56 the plaintiff, the plaintiff had no lawful right to interfere with defendant's full possession of said cotton, or any part thereof; and, in case he felt aggrieved by the action of the defendant, could only resort to the Court of Claims for relief or redress. Which last-mentioned charge, as prayed for as aforesaid, the said judge refused to give to the jury, and in lieu thereof charged the jury "that if the possession of the defendant was obtained for the purpose of enquiry and adjudi-

Refused.

Refused.

cation, and that the defendant, in good faith, prosecuted the enquiry and made the adjudication, that his possession was good for that purpose, but that if he claimed title to hold the same adversely to the title of the plaintiff, and was controlling the same in denial of his right and claim at the time, then the plaintiff might bring his suit; that the courts were open for the decision of such rights." To which refusal of the said judge to charge the jury, as requested as aforesaid, and to the charge of the court to the jury, as given as last aforesaid, the said defendant, by his counsel, did then and there except.

57 And the said judge, under the charge and with the directions aforesaid, left the issue aforesaid and the evidence so given on the trial as aforesaid to the said jury, and the jury aforesaid then and there gave their verdict for the plaintiff.

And, inasmuch as the matters aforesaid and the said charge and direction to the jury aforesaid given and refused to be given as aforesaid, as well as the said exceptions of said defendant, so taken as aforesaid, to the said rulings of the said judge, do not appear by the record of the verdict aforesaid, the said counsel for the defendant did then and there propose his exceptions to the opinion and rulings of the said judge, and requested him to sign and seal this his bill of exceptions in this behalf, and that the same may be filed and made a part of the record in this cause; and it is done accordingly.

(Signed) E. H. DURELL, *Judge.*

58 A.

Whereas it is represented that large quantities of cotton, which formerly belonged to the late so-called Confederate States, are now in possession of individuals in the Red River country concealed from the knowledge of agents appointed to collect the same, and the marks by which such former ownership could have been produced have been destroyed for the purpose of enabling the individual' holding it to convert it to their own use;

And whereas it is also represented that most of this cotton is held at places and in districts remote from military posts, so that if it could be found and identified it could not be brought forward by the agents except by increasing the expense of obtaining military to aid in its removal, and that the parties holding it dare not bring it within the reach of civil or military authorities for fear that its true character may be discovered, thereby causing its seizure;

And whereas it is also represented that a large portion of this cotton can be purchased from the holders at much less than its real value, if the purchaser will take the title at his own risk of seizure by Government authorities:

59 Now, therefore, it is hereby agreed, by and between John P. Tweed, of Cincinnati, Ohio, and Oscar H. Burbridge, supervising special agent, appointed by the Secretary of the Treasury to collect captured cotton in the third agency, as follows, viz: Said Tweed hereby agrees to furnish all money necessary to purchase the cotton aforesaid, together with all the assistance necessary for the purpose, and all requisite means of transportation, and to use all proper efforts to purchase as much of said cotton situated upon and near the Red River and its tributaries, as can be purchased, prepared for shipment, and transported to and delivered at New Orleans, at a cost not exceeding three-fourths its market value there, and to deliver the same to said Burbridge, in New Orleans, in good shipping order, with receipted bills of

sale thereof from the holders, free and discharged of all cost of purchase, expense of transportation for shipment, or of preparation, or otherwise connected therewith.

Said Burbridge hereby agrees that, upon the delivery to him as aforesaid of each lot of cotton so purchased, with receipted bills of
60 sale thereof from the holders, and free and discharged of all costs and expense of purchase, preparation for shipment, transportation, or otherwise relating thereto, he will pay and deliver to said Tweed three-fourths of the same, of average quality, as compensation in full for his services, and for all costs of purchase, expense of preparing the same for shipment or for transportation, or otherwise incurred by him, in relation thereto; such payment and delivery to be considered as a sale by the United States, so that the cotton so paid and delivered to said Tweed, shall not be subject to the payment of internal revenue by him or by his assigns; or, in case it shall be so held, then said internal revenue shall be paid by said Burbridge.

It is further agreed that this contract shall be by said Burbridge promptly submitted to the Secretary of the Treasury for his approval, and that if it shall not be approved by him, said Burbridge shall immediately notify said Tweed thereof, and the contract shall thereupon be terminated. But any cotton which shall have been purchased by said Tweed before the receipt of such notice shall be faithfully for-
61 warded by him to said Burbridge, and delivered under this contract, subject, however, to payment by him of the three-fourths thereof in manner aforesaid. It is also mutually agreed that this contract shall, at all times, be subject to revocation by the Secretary of the Treasury, or by his direction, such revocation to be made subject to the completion of any transactions previously commenced under it, in accordance with the provisions herein contained.

In witness whereof we have hereunto set our hands this 23rd day of January, 1866.

(Signed) J. P. TWEED.
(") O. H. BURBRIDGE,
Sup. Special Agent 3rd Agency T. D.

(Copy.)

62 *Bill of sale refer'ed to and attached to bill of exceptions.*

(Copy.)

JEFFERSON, *March 8th*, 1866.

No. 1.] *Cha's E. Goodwin bo't of J. L. Carroll.*

12 bales of cotton,	$60 00	$720 00
	135	252
		$972 00

Rec'd payment.
(Signed) J. L. CARROLL,
Per B. H. EPPERSON.

JEFFERSON, TEXAS, *Feb. 5th*, 1866.

No. 2.] *Cha's E. Goodwin bought of Mary S. Boyce.*

50 bales cotton, $85 00, payable in specie $4,250 00

Forty bales of the above cotton has been received and paid for by the

said Goodwin; ten bales thereof is as yet on the plantation of the said Boyce, in Bowie County, Texas, under seizure by the agents of the Treasury Department of the U. S. Gov't. As soon as the said ten bales of cotton are moved to Jefferson by said agent, the said Goodwin agrees to pay eight hundred and fifty dollars, and the cotton is to be no expense to the said Boyce after it leaves her plantation, the money to be paid to said Boyce or her agent. And the said Boyce hereby
63 acknowledges the receipt of three thousand four hundred dollars.

(Signed duplicates.) CHA'S E. GOODWIN.
(Signed) N. C. GOULD,
Attorney for Mary S. Boyce.

No. 3.

Received, Jefferson, Texas, March 5th, 1866, from C. E. Goodwin, nineteen hundred and twenty dollars, specie, in payment for 32 bales of cotton, marked W. A. B., average weight 500 lbs. per bale, at 12 cents per lb., in specie, which 32 bales are now under seizure by the U. S. Treasury agents, and are taken and received by said Goodwin, subject to all risks, expenses, and charges that have or may accrue thereon. This shows that I have also sold 33 bales of cotton, more or less, now on the plantation of W. A. Boyd, dec'd, in Bowie County, at the same price, and under the same seizure, and liable to the same seizure and expense and charges and risks, all of which are to be incurred and paid for by said Goodwin, and when said cotton is delivered at Jefferson, at the warehouse of , having been ginned and baled and transported from said plantation, in Bowie County, at the expense of
64 said Goodwin, upon the delivery thereof at Jefferson, the said Goodwin is to pay 12 cents per lb. therefore, exclusive of said expense, charges, &c., in specie, as per his obligation of even date hereof.

(Signed) ELIZA BOYD,
Executrix of W. A. Boyd.
By J. R. MOSS, *Ag't.*
SAM. F. MOULLY, *Att'y.*

(Endorsed:) Bills of sale, produced by def't, & filed May 7, '66. (Signed) F. B. Vinot, d'y cl'k.

No. 4.] JEFFERSON, TEXAS, *Feb.* 26, '66.

Cha's E. Goodwin bo't of Wright, Harrison & Co.

23 bales of cotton, marked R. T., @ $75 00 per bale, 2, U. S. currency $1,725 00

Rec'd pay.
(Signed) WRIGHT, HARRISON & CO.
(Duplicate.)

Approved.

S. G. BURBRIDGE,
Ch'ef Ass't G. S., Tre's. Dep't, 3d Dist.

(Endorsed on back:) Above cotton transferred to J. P. Tweed.
(Signed) CHA'S E. GOODWIN.

sale thereof from the holders, free and discharged of all cost of purchase, expense of transportation for shipment, or of preparation, or otherwise connected therewith.

Said Burbridge hereby agrees that, upon the delivery to him as aforesaid of each lot of cotton so purchased, with receipted bills of
60 sale thereof from the holders, and free and discharged of all costs and expense of purchase, preparation for shipment, transportation, or otherwise relating thereto, he will pay and deliver to said Tweed three-fourths of the same, of average quality, as compensation in full for his services, and for all costs of purchase, expense of preparing the same for shipment or for transportation, or otherwise incurred by him, in relation thereto; such payment and delivery to be considered as a sale by the United States, so that the cotton so paid and delivered to said Tweed, shall not be subject to the payment of internal revenue by him or by his assigns; or, in case it shall be so held, then said internal revenue shall be paid by said Burbridge.

It is further agreed that this contract shall be by said Burbridge promptly submitted to the Secretary of the Treasury for his approval, and that if it shall not be approved by him, said Burbridge shall immediately notify said Tweed thereof, and the contract shall thereupon be terminated. But any cotton which shall have been purchased by said Tweed before the receipt of such notice shall be faithfully for-
61 warded by him to said Burbridge, and delivered under this contract, subject, however, to payment by him of the three-fourths thereof in manner aforesaid. It is also mutually agreed that this contract shall, at all times, be subject to revocation by the Secretary of the Treasury, or by his direction, such revocation to be made subject to the completion of any transactions previously commenced under it, in accordance with the provisions herein contained.

In witness whereof we have hereunto set our hands this 23rd day of January, 1866.

(Signed) J. P. TWEED.
(") O. H. BURBRIDGE,
Sup. Special Agent 3rd Agency T. D.

(Copy.)

62 *Bill of sale refer'ed to and attached to bill of exceptions.*

(Copy.)

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135	252
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(Signed) J. L. CARROLL,
Per B. H. EPPERSON.

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64 said Goodwin, upon the delivery thereof at Jefferson, the said Goodwin is to pay 12 cents per lb. therefore, exclusive of said expense, charges, &c., in specie, as per his obligation of even date hereof.

(Signed) ELIZA BOYD,
Executrix of W. A. Boyd.
By J. R. MOSS, *Ag't.*
SAM. F. MOULLY, *Att'y.*

(Endorsed:) Bills of sale, produced by def't, & filed May 7, '66.
(Signed) F. B. Vinot, d'y cl'k.

No. 4.] JEFFERSON, TEXAS, *Feb.* 26, '66.

Cha's E. Goodwin bo't of Wright, Harrison & Co.

23 bales of cotton, marked R. T., @ $75 00 per bale, 2, U. S. currency $1,725 00

Rec'd pay.
(Signed) WRIGHT, HARRISON & CO.
(Duplicate.)

Approved.

S. G. BURBRIDGE,
Ch'ef Ass't G. S., Tre's. Dep't, 3d Dist.

(Endorsed on back:) Above cotton transferred to J. P. Tweed.
(Signed) CHA'S E. GOODWIN.

No. 5.] SHREVEPORT, *March 1st*, '66.

Cha's E. Goodwin bo't of W. B. Akin.

65 386 bales cotton, @ $80 00 per bale, in gold..... $30,880 00

Received payment, by check on Judson & Durie, March 2nd, 1866.
(Signed) W. B. AIKIN,
Per B. H. EPPERSON, *Att'y.*

No. 6.] SHREVEPORT, LA., *Feb. 24th*, 1866.

Received of Albe't Adam, $280 00, in currency, for four bales cotton, marked L. P.
(Signed) NAT. KRAMER.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the originals, withdrawn by def'd't, with leave of court.
New Orleans, May 7th, 1866.
[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

66 Shipped, by Putnam, Kouns & Co., on board the steamboat called the David Watts, whereof is master, now lying in the port of Shreveport, and bound for New Orleans, La., the following articles, marked or numbered as below, which are to be delivered without delay, in like order and condition, at the said port (unavoidable dangers of navigation and fire only excepted) unto M'rss. Scott, Cage & Co., *subject to*, or assigns, he or they paying freight for the same a the rate of four dollars per bale, the order of O. H. Burbridge for adjudication.

In witness whereof the master, clerk, or agent of the said steamboat hath affirmed to five bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Shreveport, March 13th, '66.

Marks.	Articles.	Consignees.	Whose account.	Charges of the S. B. Lizzie Hamilton, as per accompanying bill.
(B) (40).....	Forty bales cotton.....	Scott, Cage & Co..	J. P. Tweed.....	
W. A. B. (32)	Thirty-two bales cotton..	Scott, Cage & Co..	J. P. Tweed.....	
				$3, 361 90

Not accountable for condition, weights, or marks.
(Signed) R. M. HAYDOCK, *Clk.*

[Inter. rev. stamp.]

67 *Correspondence refer'ed to and attached to this bill of exceptions.*

1.] To B. F. FLANDERS, *Treas. Ag't:*

Remain at your post, and act as dep'ty general agent until otherwise directed. Answer.
(Signed) H. McCULLOCH, *Sec'y Treas.*

2.] TREASURY DEPARTMENT, *March 10th*, 1866.

SIR: You are hereby appointed deputy general agent of this Department, to act as such until otherwise instructed.

Respectfully,
(Signed) H. McCULLOCH,
Secretary of the Treas.

B. F. FLANDERS, Esq., *New Orleans, La.*

TREASURY DEPARTMENT, *February 24th*, 1866.

SIR: Instructions, similar to those enclosed you herewith, go forward to-day to each supervising agent relative to the closing up of the business of all the agencies. You will please see that the supervising agents communicate the instructions as rapidly as possible to all their
68 assistant agents, local agents, sub-agents, and contractors, immediately cease their operations, except in accordance with the instructions. The provision forbidding supervising agents from releasing cotton, except by your direction of the direction of the Department, arises from a conviction that this course will be less likely than any other to result in complaints of unfair dealing and extortion on the part of local agents and contractors. You will, therefore, please give your personal attention to the cases where cotton is now under seizure by Mr. Burbridge, Mr. Dent, and Mr. Tomeney, and will see that the papers, in cases of importance, properly made up, are promptly transmitted to the Department for action. In cases where small lots of cotton are under seizure, and it appears to you that there is no evidence sufficient to warrant its detention, you will direct that the same be released; but where the lots of cotton are large, and the evidence is doubtful, you will refer such cases to the Department, and it would assist in the decision of the case if you would indicate your opinion thereon.

The contracts of Mr. Tomeney with Messrs. Ogden & Co., and
69 Mr. Burbridge with Mr. J. P. Tweed are, of course, included in the instructions for terminating all contracts.

Very respectfully,
(Signed) H. McCULLOCH,
Sec. of the Treas.

W'M P. MELLEN, Esq.,
Gen. Ag't Treas. Dep't, New Orleans, La.

TREAS. DEPARTMENT, *Feb. 23rd*, '66.

SIR: After the receipt of this letter, you will neither make nor cause nor authorize any seizures or detentions of cotton or other property as captured or abandoned, unless by special written direction in each case from the general agent, or direct from the Department.

In any case which may come to your knowledge of property belonging to the late so-called confederate government, where the property is of such amount and so situated, with such clear proofs as in your judgment to make it important for the Government that it should be secured, you will at once report all the facts (including the evidence and a statement as to the locality of the property, or the direction in
70 which it is moving) to the general agent or to the Department, and await instructions on the subject. Immediately upon the receipt hereof, you will make a special report to the Department of all lots of cotton or other property now under seizure or detention within your agency by your authority or direction, or that of any assistant or

sub-agent or contractor, together with all the evidence in relation thereto, retaining said cotton in its then locality and condition, protecting the same from loss or damage, but not rebaling any cotton, nor placing it in pickery, nor incurring any unreasonable expense on its account. And no shipment, release, or division of the same will be made in any case, except by direction of the general agent or the Department.

You will also immediately terminate all contracts of whatever nature for collecting captured or abandoned property now outstanding within your agency, by your authority or the authority of any assistant or sub-agent, and also terminate at once all further operations under any such contracts; and you will also immediately furnish to the De-
71 partment a full statement of all such contracts, and of the condition of operations under the same.

You will, as soon as possible, discontinue the services of all assistant and sub-agents within your agency not absolutely required in the immediate closing up of your business; and no compensation will be paid to any agent or employé in your agency longer than ten days after the receipt of this letter, unless upon special report to the Department, stating the reasons therefor, their further continuance in office shall be authorized.

You will make your arrangements to finally close the business of your office as soon as possible, settling or approving the accounts of your subordinates, and promptly forwarding your own accounts for final settlement.

The receipt of this letter will be acknowledged by telegraph.

Respectfully,

(Signed) H. McCULLOCH,
Sec. of the Treas.

B. F. FLANDERS, Esq.,
Sup. Sp. Ag't Tr. Dep't, 3d agency, &c.,
New Orleans, La.

72 *Document* 28, *offered by defendant, and filed February* 13*th*, 1868.

[Dated Washington, 6, 1866; received at New Orleans, April 6th, 1866.]

6.] To B. F. FLANDERS,
Dep't Gen. Ag't Treas. Dep't:

Release Britton cotton, unless evidence clearly justifies further detention; in that event, await the arrival of Mr. Fogg, when you and he will fully investigate the whole case and make such disposition of it, and institute such proceedings against all parties as the act warrants; after consulting with Gen. Canby and Mr. Kellogg, answer.

(Signed) HUGH McCULLOCH,
Sec'ty Treas'y.

[Dated Washington, 9th, 1866; rec'd at N. O., April 10th, 1866.]

7.] To B. F. FLANDERS:

What have you done in the Britton cotton case? Answer.

(Signed) H. McCULLOCH,
Sec'ty Treas'y.

[Dated Washington, 16th, 1866; received at New Orleans, Ap'l 16, 1866.]

8.] To B. F. FLANDERS, *Treas'y Ag't:*

73 Decide Tweed and Britton cases as soon as possible, to prevent further loss from decline. Would advise that you carry out Tweed's contract as to what was bought in good faith before its revocation, and leave any bought afterwards, unless you have sufficient evidence to justify its being held. Report action.

(Signed) H. McCULLOCH.

(Telegram.—Copy.)

9.] APRIL 17TH, 1866.

Hon. H. McCULLOCH,
Secretary of the Treasury, Washington, D. C.:

Your telegram of 16th received; Britton's case, release; decided on the 11th, and Tweed's on the 14th. Distribution delayed at Tweed's request.

(Signed) BENJ. F. FLANDERS.

Document 29, *offered by defendant, and filed February* 13*th*, 1868.

[Dated Washington, 25th; received at N. O., April 25th, 1866.]

10.] To B. F. FLANDERS, *Treas. Ag't:*

If all legal proceedings are first dismissed, I will consent that the one-fourth part of the Tweed cotton, so-called, shall remain at
74 New Orleans until all papers are submitted to me for further considerations and instructions.

(Signed) H. McCULLOCH.

11.] TREASURY DEPARTMENT, *April 25th*, 1866.

SIR: A telegram has been sent to you this day in the following words: "If all legal proceedings are first dismissed, I will consent that the one-fourth (¼) part of the Tweed cotton, so-called, shall remain at New Orleans until all papers are submitted to me for further consideration and instructions.

(Signed) "H. McCULLOCH,
"*Sec'y of the Treas'y.*"

Respectfully,
(Signed) J. S. HARTLEY,
Ass't Sec'y of the Treas'y.

B. F. FLANDERS,
Treas'y Ag't, New Orleans, La.

Document 30, *offered by defendant and filed February* 13*th*, 1868.

TREASURY DEPARTMENT, *April 2nd*, 1866.

SIR: I have received your letter of the 22nd ult. with enclosures, relative to certain cotton claimed by Mr. Tweed and others, but
75 your telegram on the same subject, therein referred to, was not received.

TREAS'Y DEP'T, *New Orleans, La.*

Your action in the premises, as reported, is approved. Had you done less I should have regarded you as failing to do your whole duty. From the facts stated, Mr. Tweed manifestly transcended the authority of his contract with the Department, and violated its spirit and intent by his course in the premises; but, inasmuch as it appears that he bought the cotton at a price near its value at the place of purchase, and actually paid therefor, I am disposed to give him the benefit of the provisions of the contract, in disposing of the case, it being understood however, that this decision will not be regarded as a precedent in the disposition of other cases of a similar character which may hereafter be brought to the notice of the Department.

You are therefore hereby authorized, if you think it best, to make the distribution of the cotton in question contemplated by the con-
76 tract referred to, shipping to the cotton agent at New York, to be sold as captured property, the portion received as the Government's share.

Although I am advised of the general character and object of the contract, I am not familiar with its details—no copy having been transmitted to the Department, and am, therefore, unable to give you more specific instructions in the case; but I am willing to leave the whole matter in your hands, with the above indication of my views. Please report at once your action hereunder.

Respectfully,
(Signed) H. McCULLOCH,
Secretary of the Treas.

B. F. FLANDERS, Esq.,
Dept'y Gen'l Ag't, Treas'y Dep't, New Orleans, La.

Document 31, *offered by defendant, and filed February* 13*th*, 1868.

13.] TREASURY DEPARTMENT, *March* 23*rd*, 1866.

SIR: A telegram has been sent to you this day in the following words:

"Your action in Tweed case approved. Hold the cotton with-
77 out distribution for further directions, and forward all facts by mail.

(Signed) "H. McCULLOCH,
"*Sec. of the Treasury.*"

Respectfully,
(Signed) J. S. HARTLEY,
Ass't Secretary of the Treas'ry.

B. F. FLANDERS, Esq.,
Treasury Agent, New Orleans, La.

Letter 32, *offered by defendant, and filed February* 13*th*, 1868.

14.] TREASURY DEPARTMENT, *April* 16*th*, 1866.

SIR: A telegram has been sent to you this day in the following words:

"Decide Tweed and Britton cases as soon as possible, to prevent further loss from decline. Would advise that you carry out Tweed's contract as to what was bought in good faith before its revocation, and

release any bought afterwards unless you have sufficient evidence to justify it being held. Report action.

(Signed) " H. McCULLOCH,
" *Sec'y of the Treasury.*

Respectfully,
(Signed) J. F. HARTLEY,
78 *Ass't Secretary of the Treasury.*

B. F. FLANDERS, Esq.,
Treasury Ag't, New Orleans, La.

Rule.—Extract from minutes of Thursday, May 4th, 1871.—April term, 1871.

J. P. TWEED
vs.
B. F. FLANDERS, GEN'L AG'T TREAS'Y DEP'T. } No. 3857.

On motion of J. R. Beckwith, U. S. att'y, appearing by direction of the Treasury Department for the defendant herein—

It is ordered that the plaintiff show cause on the 6th instant, at 11 o'clock, a. m., why an order directing an arrest of judgment herein should not be made and entered in this cause, on the grounds filed.

Grounds for arrest of judgment.—Filed May 4th, 1871.

Circuit court of the United States, district of Louisiana.

79 J. P. TWEED
vs.
B. F. FLANDERS, DEP'T GENERAL AGENT OF the Treasury Depart. of the U. States. } No. 3857.

On motion of J. R. Beckwith, U. S. attorney, appearing by direction of the Treasury Department for the defendant herein—

It is ordered that the plaintiff show cause, on the 6th instant, at 11 o'clock a. m., why an order directing an arrest of judgment herein should not be made and entered in this cause for the following reasons among others:

1st. That the record and proceedings in this cause show this court to be, and at all times to have been, wholly and utterly without jurisdiction to hear and entertain this cause.

2nd. That it appears from the plaintiff's petition and by plaintiff's own showing that the defendant in and about all and singular the acts and supposed wrongs in said plaintiff's petition complained of
80 was acting as a duly appointed deputy general agent of the Treasury Department of the United States, administering the several acts of Congress relating to property captured and abandoned during the late insurrection, and acting in virtue of or under colour of said several acts of Congress. Wherefore, this court was and is without any jurisdiction to hear and determine the matters set forth in said plaintiff's petition, or to render any judgment in this cause.

Order.—Rule dismissed.—Extract from minutes, Saturday, May 6th,'71.—April term, 1871.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

The motion in arrest of judgment came up—J. R. Beckwith for defendants, J. A Campbell & E. C. Billings for plaintiff—when, after hearing argument, for reasons orally assigned, it is ordered that the application be refused.

Judgment.—Extract from minutes, Saturday, May 6th, 1871.

SAME
vs.
SAME. } No. 3857.

81 By reason of the verdict of the jury in favor of the plaintiff upon the petition, exceptions, and answer of the defendant and of the intervenor, it is ordered, adjudged, and decreed that John P. Tweed the plaintiff, has established his title to the property described in the petition and to the possession of the same; and that the defendant, Benjamin F. Flanders, be decreed to pay all of the costs of this suit.

It is further decreed that the claim of the intervenor be dismissed but without costs.

Rule for a new trial.—Extract from minutes, Saturday, May 6th, 1871.

SAME
vs.
SAME. } No. 3857.

On motion of J. R. Beckwith, U. S. attorney, appearing for defendant by direction of the U. S. Government, it is ordered that plaintiff show cause on 10th instant, at 11 a. m., why the verdict of the jury should not be set aside and a new trial granted in this case on the grounds filed.

Grounds for new trial.—Filed May 6th, 1871.

82 Circuit court of the United States, district of Louisiana.

J. P. TWEED
vs.
B. F. FLANDERS, DEP'T GEN. AGENT, &C. } No. 3857.

On motion of J. R. Beckwith, U. S. att'y, appearing for defendant by direction of the United States Government, it is ordered that the plaintiff show cause on the 10th instant, a 11 a. m., why the verdict of the jury should not be set aside and a new trial granted for the following reasons: 1st. That the verdict is contrary to the law and the evidence produced on the trial. 2nd. That the court erred in its charge to the jury, and in refusing to charge the jury as requested by the defendant, whereby the jury was misled.

Order.—New trial refused.—Extract from minutes, Wednesday, May 10th, 1871.

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

The rule for a new trial in this cause having been submitted
83 without argument, ordered that said rule be discharged and a new trial refused with costs.

Entry for supersedeas.—Extract from minutes, Thursday, May 18th, 1871.

JNO. P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

J. R. Beckwith, attorney for the defendant, this day filed a petition for a supersedeas in this case.

Petition for supersedeas.—Filed May 18th, 1871.

Circuit court of the United States, district of Louisiana.

JOHN P. TWEED
vs.
BENJAMIN F. FLANDERS. } No. 3857.

And now comes Benjamin F. Flanders, sued in his behalf as deputy general agent of the Treasury Department of the United States, and now also as well comes the United States, by J. R. Beckwith, its attorney for said district of Louisiana, show unto the court that this defendant is aggrieved by the final judgment rendered against the defendant herein in this cause at the present term of the court, and
84 that there is error therein to his prejudice, and that the said defendant is ordered by the Secretary of the Treasury, on behalf of the Government of the United States, to sue out & prosecute a writ of error in this case, that the judgment and proceedings in this court may be reviewed and any error therein considered by the Supreme Court of the United States. Wherefore the said Benjamin F. Flanders, and the said U. S. district attorney pray that a writ of error allowed the defendant herein, returnable as the law directs, and that the same operate as a supersedeas therein, without bond, obligation, or security being demanded.

(Signed) J. R. BECKWITH,
U. S. Att'y for Petitioner.

Motion and order.—Prayer for supersedeas fixed.—Extract from minutes, Friday, May 19th, 1871.—April term, 1871.

J. P. TWEED.
vs.
B. F. FLANDERS. } No. 3857.

By consent of counsel the argument on the petition for a supersedeas is set for hearing on 20th inst. at 11 a. m.

85 *Order.—Application for supersedeas denied.—Extract from minutes, Saturday, May 20th, 1871.—April term, 1871.*

JOHN P. TWEED
vs.
B. F. FLANDERS. } No. 3857.

In this cause after hearing argument of counsel on both sides, it is ordered that the application for a supersedeas be denied.

Petition for writ of error.—Filed May 22nd, 1871.

To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana :

The petition of the United States of America, with respect, shows that, on the 11th day of May, 1871, a final judgment was rendered against them as intervenors in the case of John P. Tweed, plaintiff, against Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, defendant, and they are aggrieved thereby, and are advised that there is error therein to their prejudice. Wherefore they pray that a writ of error be allowed them from the said
86 judgment, returnable to the next term of the Supreme Court of the United States, as the law directs.

(Signed) J. R. BECKWITH,
U. S. Att'y.

Motion and order for writ of error.—Extract from minutes, Monday, May 22nd, 1871.—April term, 1871.

UNITED STATES.
vs.
JNO. P. TWEED & AL. } No. 3857.

On motion of J. R. Beckwith, attorney of the United States, and on presenting and filing petition on their behalf, representing that they are aggrieved by the judgment herein rendered against them as intervenors, on the 11th day of May, 1871, and praying a writ of error therefrom, returnable to the next term of the Supreme Court of the United States, it is ordered that the same be allowed as prayed for.

87 UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and District of Louisiana :

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 86 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of John P. Tweed vs. B. F. Flanders, supervising special agent of the U. S. Treas'y Dep't, No. 3857 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10 day of June, A. D. 1871.

[SEAL.] D. URBAN, *Clerk.*

[5-ct. int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 10 day of June, A. D. 1871.

E. H. DURELL, *Judge.*

[5-ct. int. rev. stamp, canceled.]

88 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between John P. Tweed, plaintiff, and Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, No. 3857 of the docket of the said circuit court, a manifest error hath happened, to the great damage of the said Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 18th day of May, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

89 (Indorsed:) United States circuit court. No. 3857. John P. Tweed, def'd't in error, versus BenjaminF. Flanders, deputy general agent of the Treasury Department of the United States, plaintiff in error. Writ of error. Filed May 18th, 1871.

F. B. VINOT, *D'y Clk.*

90 DISTRICT OF LOUISIANA,
Parish of Orleans, ss:

J. N. Beckwith, being first duly sworn, deposes and saith that he is U. S. district attorney in and for the district of Louisiana; that, on the 19th day of May, A. D. 1871, he served the citation in error hereto annexed in the cause of Benjamin F. Flanders, deputy general agent of

the Treasury Department of the United States, plaintiff in error, vs. John P. Tweed, defendant in error, by delivery to John A. Campbell & E. C. Billings, esquires, attorneys at law, and attorneys of record of the said defendant in error in said cause, a true copy of said citation, at the city of New Orleans, the said John P. Tweed defendant in error not at that time being in the said district of Louisiana.

J. N. BECKWITH.

Sworn to & subscribed before me May 20th, 1871.

F. B. VINOT, *D'y C'lk.*

91 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to John P. Tweed, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this eighteenth day of May, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

92 (Indorsed:)

United States circuit court. Fifth circuit & district of Louisiana. No. 3857. Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, pl'ff in error, vs. John P. Tweed, def'd't in error. Citation.

Marshal's return.

Service acknowledge'.

E. C. BILLINGS,
J. A. CAMPBELL,
Att'ys for Def't in Error.

May 19, 1871.

Filed May 19, 1871.

F. B. VINOT, *D'y C'lk.*

93 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between John P. Tweed, plaintiff, and Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, and the United States of America, intervenor, No. 3857 of the docket of

the said circuit court, a manifest error hath happened, to the great damage of the said United States of America, intervenor, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 22d day of May, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

94 (Indorsed:) United States circuit court. No. 3857. United States of America, pl'ff in error, versus John P. Tweed & Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, def'd'ts in error. Writ of error. Filed May 22d, 1871. F. B. Vinot, d'y cl'k.

95 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to John P. Tweed and Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 22nd day of May, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

96 (Indorsed:)

United States circuit court. No. 3857. United States of America, pl'ff in error, vs. John P. Tweed & Benjamin F. Flanders, deputy general agent of the Treasury Department of the United States, def'ts in error. Citation.

Marshal's return.

Received, May 22, 1871, by the U. S. marshal, and, on the 22d day

same month and year served copies of the within citation in error on the within-named defendants in error as follows, to wit:

On Benj. F Flanders, personally; on John P. Tweed, by delivering a copy of same to E. C. Billings, one of his attorneys, in person; and on the 23d day same month and year served another copy of within citation in error on John P. Tweed, defendant in error, by delivering the same to J. A. Campbell, one of his attorneys, in person.

New Orleans, May 23d, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 23d day of May, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered copies of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me.

F. B. VINOT,
D'y Clk.

(Indorsement on cover:) No. 366. The United States, intervenor, plaintiff in error, vs. John P. Tweed and Benjamin F. Flanders, deputy general agent of the Treasury Department, U. S. Filed 30th October, 1871. And No. 628. Benjamin F. Flanders, deputy general agent of the Treasury Department of the U. S., plaintiff in error, vs. John P. Tweed. Louisiana C. C. U. S. Filed March 8, 1872.